

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH J. KIELHORN and DEPARTMENT OF LABOR,
CCC JOB CORPS ENROLLEES, Golconda, IL

*Docket No. 00-685; Submitted on the Record;
Issued March 6, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she sustained an emotional condition while in the performance of duty causally related to factors of her federal employment.

Appellant, a 45-year-old health care manager, filed a claim on March 18, 1999 alleging that she sustained emotional stress as a result of her federal employment. She stated that she first realized her emotional condition was caused or aggravated by her employment on February 23, 1998. Appellant indicated that she worked in a hostile environment with a coworker, Keith Durfee, since January 1996 and that she feared this man and felt unsafe because of his intimidation and threats. In separate statements, appellant outlined incidents and events wherein she described Mr. Durfee's alleged harassment. She stated that she had filed a grievance and unfair labor practice against Local 1840 NFFE of which Mr. Durfee was Vice-President as she felt that Mr. Durfee had tried to destroy her personally and professionally. Appellant also indicated that in her request to be reassigned to another unit was denied and management did not take her fears of Mr. Durfee seriously.

In a decision dated September 20, 1999, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established compensable work factors.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established that she sustained an emotional condition while in the performance of duty.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment contributing to her condition. Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Federal Employees' Compensation Act. Where disability results from an emotional reaction to regular or specially

assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from factors such as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

Appellant has made a number of allegations regarding Mr. Durfee's behavior towards her professionally and personally. She related that Mr. Durfee sent out electronic messages to multiple people both on and off the center with regard to sick students and the care provided by the medical unit. Appellant related that Mr. Durfee harassed the medical unit, created a hostile working environment and accused her of harassing students. She stated that this turned the students against the medical department and made her job impossible. Appellant submitted a February 2, 1996 statement from Deborah Griffith, RN, BSN, Health Care Manager, about Mr. Durfee's allegations concerning the medical unit; electronic messages, mostly from Mr. Durfee, concerning the allegations; and an electronic apology from Mr. Durfee addressed to appellant. Although requested from the Office, no evidence pertaining to how the student's behavior changed either towards the medical department or appellant was submitted. Also not of record was any evidence of how appellant's job changed because of Mr. Durfee's allegations. Although appellant has submitted evidence that Mr. Durfee made certain allegations against the medical unit in which she worked, there is no showing of error or abuse in the employing establishment's handling of Mr. Durfee's allegations⁴ and, as such, appellant has not established a compensable employment factor under the Act in this respect. Appellant further asserted that when she sent an electronic message on February 24, 1999 regarding the policy for sick call, Mr. Durfee encouraged a hurtful response that a manager had made. Although the Office accepted that this factually occurred, there is not showing of error or abuse in the employing establishment's handling of this situation and, as such, appellant has not established a compensable employment factor.

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁴ *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

Appellant has alleged that she was subject to harassment from Mr. Durfee in his capacity as Vice-President of the local union and filed a grievance and unfair labor practice. With respect to a claim based on harassment or discrimination, the Board has held that actions of an employee's supervisors or coworkers, which the employee characterizes as harassment may constitute a factor of employment giving rise to a compensable disability under the Act. A claimant must, however, establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁵ An employee's allegation that he or she was harassed or discriminated against is not determinative of whether or not harassment occurred.⁶ In this case, appellant has alleged and submitted evidence pertaining to Mr. Durfee's request that appellant's position as a nurse be downgraded from a GS-11 to a GS-09 and Mr. Durfee's request that as appellant was no longer in management, she should not continue to be acting center director and should be removed from the leadership team. Appellant alleged that Mr. Durfee effectuated her removal from the rotating list for acting center director. The Board cannot find that harassment has been established as a compensable factor in this case. Although the employing establishment acknowledged that appellant was removed from the management team, Janice Taylor, Administrative Officer, could not attest to the reason for the removal. Ms. Taylor further stated that appellant was advised by management that Mr. Durfee had no power or authority to change her employability or pay status. Moreover, a July 20, 1999 settlement agreement between appellant and the NFFE and NFFE Local 1840 stated that neither NFFE nor its agent NFFE Local 1840 was seeking to downgrade appellant's position nor seeking to preclude her from serving as Acting Administrative Officer, any other appropriate position or from performing appropriate duties. Although a June 29, 1999 letter of apology was issued, there was no indication that Mr. Durfee's actions constituted harassment of appellant. Moreover, the Board notes that no reason was provided for appellant's removal from serving as an Acting Administrative Officer. Accordingly, appellant's reaction to her job status as being afforded the opportunity to serve as an Acting Administrative Officer pertains to an administrative or personnel matter of the employer and, as there is no showing that the employing establishment erred or acted abusively, this administrative action is not considered a compensable factor of employment.⁷

Appellant alleged that her request to be reassigned to another unit was denied and management did not take her fears of Mr. Durfee seriously. Appellant alleged that her car was vandalized in front of her home; she feared Mr. Durfee would physically harm her; Mr. Durfee would stare and glare at her; and Mr. Durfee shakes violently, slams things around and becomes verbally abusive when upset. Appellant further related that she lost her ability to concentrate and spent her time making sure that her surroundings were safe. There is no evidence provided which would establish that appellant's work environment was hostile and prevented appellant from performing her nursing duties. Moreover, there is no evidence establishing the alleged incidents or that Mr. Durfee vandalized appellant's car or threatened to physically harm appellant. It appears that appellant was reacting to a perception of tension between Mr. Durfee

⁵ *Gregory N. Waite*, 46 ECAB 662 (1995); *Barbara J. Nicholson*, 45 ECAB 803 (1994).

⁶ *Helen P. Allen*, 47 ECAB 141 (1995).

⁷ *Anne L. Livermore*, 46 ECAB 425 (1995); *see also Sharon R. Bowman*, 45 ECAB 187 (1993).

and herself in the workplace resulting from previous altercations concerning administrative or personnel matters⁸ and fear of future incidents. A reaction to a perception of such tension does not relate to regular or specially assigned duties and would not be considered a compensable work factor.⁹ The Board notes that appellant's reaction to such conditions and incidents at work must be considered self-generated in that it resulted from her frustration in not being permitted to work in a particular environment or to hold a particular position.¹⁰ The Board has further held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment as they do not involve the employee's ability to perform his or her regular or specially assigned work duties but rather constitute his or her desire to work in a different position.¹¹ The record reflects that the employing establishment took appellant's concerns seriously by: providing workplace violence training; directing Mr. Durfee to have no verbal or physical contact with appellant and denied him access into the medical unit. Accordingly, in this case, the Board is unable to find any probative evidence error or abuse by the employing establishment in the denial of appellant's request to be reassigned to another unit for a "safer" environment.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.¹²

⁸ The record reflects electronic mailings concerning corrections to management coding for a coworker; examples of Mr. Durfee's inappropriate behavior which do not directly concern appellant.

⁹ See, e.g., *Mary A. Sisneros*, 46 ECAB 155 (1994); *Mildred D. Thomas*, 42 ECAB 888 (1991).

¹⁰ *Tanya A. Gaines*, 44 ECAB 923, 934-35 (1993).

¹¹ *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

¹² As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzychi*, 43 ECAB 496, 502-03 (1992).

The decision of the Office of Workers' Compensation Programs dated September 20, 1999 is affirmed.

Dated, Washington, DC
March 6, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member